

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

**DECLARATION OF MICHAEL D. HARBOUR IN SUPPORT OF PLAINTIFF NETLIST,
INC.'S MOTION FOR SUMMARY JUDGMENT ON SAMSUNG'S LICENSE DEFENSE**

I, Michael D. Harbour, declare as follows:

1. I am an attorney at the law firm of Irell & Manella LLP, counsel for Plaintiff Netlist, Inc. (“Netlist”) in the above captioned action. I am a member of good standing of the State Bar of California and have been admitted to practice pro hac vice before this Court in this action. I provide this declaration in support of Netlist’s Motion for Summary Judgment on Samsung’s License Defense.

2. Attached as **Exhibit 1** are excerpts of the transcript of a hearing held before M. Smith and Desai, Circuit Judges, and Amon, District Judge in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 22-55209, June 8, 2023.

3. Attached as **Exhibit 2** is an email from C. K. Hong, a Netlist employee, to Jihoo Hwang, a Samsung employee, attaching a Netlist document titled [REDACTED] bearing Bates numbers beginning NL107804, dated April 16, 2015.

4. Attached as **Exhibit 3** are excerpts of the transcript of the deposition of Kyuhan Han in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), dated August 9, 2021.

5. Attached as **Exhibit 4** is an email from Kyuhan Han, a Samsung employee, to JB Kim, a Netlist employee, attaching a [REDACTED]
[REDACTED], bearing Bates numbers beginning NL108668, dated May 18, 2015.

6. Attached as **Exhibit 5** is an email from Ho-Jung Kim to JB Lee attaching a draft Joint Development License Agreement, bearing Bates numbers beginning NL049006, dated October 8, 2015.

7. Attached as **Exhibit 6** is the executed Joint Development and License Agreement between Netlist, Inc. and Samsung Electronics Co., Ltd., bearing Bates numbers beginning SEC000001, dated November 12, 2015.

8. Attached as **Exhibit 7** is the English translation of an email chain between Jibum Kim and Netlist and Samsung employees attaching a draft Joint Development License Agreement, bearing Bates numbers beginning NL045876, dated October 13, 2015.

9. Attached as **Exhibit 8** is the English translation of an email chain between Jibum Kim and Netlist and Samsung employees attaching a draft Joint Development and License Agreement, bearing Bates numbers beginning NL118148, dated October 21, 2015.

10. Attached as **Exhibit 9** are excerpts of the transcript of the deposition of Chuck Hong in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), dated August 13, 2021.

11. Attached as **Exhibit 10** is invoice data from 2015, bearing Bates number NL117869 (data excerpt).

12. Attached as **Exhibit 11** are excerpts of Defendant Samsung's Statement of Genuine Disputes of Material Fact, filed as Dkt. 168-1 in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), August 30, 2021.

13. Attached as **Exhibit 12** is the English translation of an email from Ho-Jung Kim to JB Kim attaching a letter from Hyun-Ki Ji to Netlist, Inc. [REDACTED]
[REDACTED], bearing Bates numbers beginning NL044944.

14. Attached as **Exhibit 13** is the English translation of an email chain between Samsung employees Indong Kim and Steven Metz, bearing Bates numbers beginning SEC001047, dated June 2, 2016.

15. Attached as **Exhibit 14** is an email from Hyeok-sang Yoo to Kyong-yong Lee attaching a document titled [REDACTED] and English translation, bearing Bates numbers beginning SEC099178, dated March 28, 2017.

16. Attached as **Exhibit 15** are excerpts of Netlist, Inc.'s Form 10-K for fiscal year ended December 31, 2016.

17. Attached as **Exhibit 16** are excerpts of Netlist, Inc.'s Form 10-K for fiscal year ended December 29, 2018.

18. Attached as **Exhibit 17** are excerpts of the transcript of the deposition of Joseph Calandra in this action, dated November 8, 2023.

19. Attached as **Exhibit 18** are excerpts of Defendant-Appellant Samsung Electronics CO., Ltd.'s First Brief on Cross-Appeal in Case Nos. 22-55209 (L), 22-55247, dated June 6, 2022.

20. Attached as **Exhibit 19** is an email chain between Samsung employees Steven Metz and Neal Knuth, attaching a presentation titled [REDACTED] bearing Bates numbers beginning SEC058105, dated May 24, 2017.

21. Attached as **Exhibit 20** is an email chain between Samsung and Netlist employees regarding Netlist Backlog of 01/19/18, bearing Bates numbers beginning NL020775, dated February 19, 2018.

22. Attached as **Exhibit 21** is an email chain between P. K. Hong and Netlist and Samsung employees regarding Netlist Backlog of 01/19/18, bearing Bates numbers beginning NL020775, dated February 19, 2018.

23. Attached as **Exhibit 22** are excerpts of Defendant Samsung's First Supplemental Responses to Netlist's First Set of Interrogatories, in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), June 24, 2021.

24. Attached as **Exhibit 23** is the English translation of an email from Ho-Jung Kim to Hyeok-sang Yoo regarding Netlist JDLA Agreement, bearing Bates number SEC001269, dated January 17, 2018.

25. Attached as **Exhibit 24** are excerpts of the transcript of proceedings held before the Honorable Mark C. Scarsi in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), dated September 20, 2021.

26. Attached as **Exhibit 25** are excerpts of the transcript of the deposition of Steven Metz in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), dated August 6, 2021.

27. Attached as **Exhibit 26** is an email chain between Samsung employees Lane Kim and Daniel Lee regarding Netlist Management, bearing Bates numbers beginning SEC264217, dated June 8, 2017.

28. Attached as **Exhibit 27** is the English translation of an email chain between Hyeok-sang Yoo and Kyong-yong Lee regarding Cap, bearing Bates numbers beginning SEC116009, dated March 22,

2021.

29. Attached as **Exhibit 28** is the English translation of an email chain between Arnold Sunghan Kim and Kyong Yong Lee regarding the Netlist agreement, bearing Bates numbers beginning SEC000315, dated February 2, 2018.

30. Attached as **Exhibit 29** is the English translation of an email chain between Hyeok-sang Yoo and Kyong-yong Lee regarding A call on Monday -- Netlist, bearing Bates numbers beginning SEC162320, dated May 24, 2017.

31. Attached as **Exhibit 30** is an email chain between TJ Jeong and Kihoon Kim regarding [REDACTED] bearing Bates numbers beginning SEC003842, dated March 29, 2017.

32. Attached as **Exhibit 31** are excerpts of the transcript of the deposition of Neal Knuth in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), dated August 14, 2021.

33. Attached as **Exhibit 32** are excerpts of the transcript of the deposition of Indong Kim in Netlist Inc. v. Samsung et al., no. 2:21-cv-463 (E.D. Tex.) dated December 8, 2022.

34. Attached as **Exhibit 33** is a letter from Marc Frechette, a Netlist employee, to Seung Min Sung, a Samsung employee, regarding Joint Development and License Agreement, bearing Bates numbers beginning NL109254, dated May 27, 2020.

35. Attached as **Exhibit 34** is an email from Marc Frechette, a Netlist employee, to Seung Min Sung, a Samsung employee, regarding Joint Development and License Agreement, bearing Bates number NL109253, dated June 12, 2020.

36. Attached as **Exhibit 35** is a letter from Marc Frechette, a Netlist employee, to Seung Min Sung, a Samsung employee, regarding License termination under the Joint Development and License Agreement, bearing Bates numbers beginning NL000568, dated July 15, 2020.

37. Attached as **Exhibit 36** are excerpts of the transcript of the deposition of Ho-Jung Kim in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), dated August 13, 2021.

38. Attached as **Exhibit 37** is the Unredacted Defendant Samsung's Notice of Motion and Motion for Judgment on the Pleadings, filed as Dkt. 50-1 in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), June 15, 2021.

39. Attached as **Exhibit 38** is Defendant Samsung's Proposed Statement of Uncontroverted Facts, filed as Dkt. 157-2 in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), August 17, 2021.

40. Attached as **Exhibit 39** is Defendant Samsung's Opposition to Netlist's Motion for Partial Summary Judgment, filed as Dkt. 168 in Netlist Inc. v. Samsung Electronics Co., Ltd., no. 8:20-cv-993 (C.D. Cal), August 30, 2021.

41. Spreadsheets showing [REDACTED]
[REDACTED] were produced in the Central District of California action at, for example NL117869. Because these spreadsheets are voluminous, we have not attached them to this motion but can provide them at the Court's requests.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 12, 2023, in Los Angeles, California.

/s/ Michael D. Harbour
Michael D. Harbour